

**Security Council**

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**Security Council Committee established
pursuant to resolution 2127 (2013) concerning
the Central African Republic**

**Note verbale dated 4 March 2014 from the Permanent Mission
of Australia to the United Nations addressed to the Chair of
the Committee**

The Permanent Mission of Australia to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic, and has the honour to refer to the note verbale dated 16 January 2014, in which Member States were called upon to report to the Committee within 90 days from the adoption of the resolution on the steps they had taken with a view to implementing effectively paragraph 54 of resolution 2127 (2013).

The Permanent Mission of Australia has the further honour to attach Australia's report pursuant to paragraph 58 of resolution 2127 (2013) (see annex).



**Annex to the note verbale dated 4 March 2014 from the
Permanent Mission of Australia to the United Nations addressed to
the Chair of the Committee**

**Report of Australia to the Security Council Committee established
pursuant to resolution 2127 (2013) concerning the Central African
Republic, on the implementation of the arms embargo measures
set out in resolution 2127 (2013)**

1. The Security Council, in paragraph 58 of resolution 2127 (2013) of 5 December 2013, called upon all Member States to report to the Committee within 90 days from the adoption of the resolution on the steps they had taken with a view to implementing effectively paragraph 54. The present report describes the steps taken by Australia to implement the measures set out in paragraph 54. References in this report to "the Committee" are to the Committee established under Security Council resolution 2127 (2013) unless otherwise specified.

Measures given effect under the Charter of the United Nations Act 1945

2. Paragraph 54 of resolution 2127 (2013) is implemented in Australia primarily through the Charter of the United Nations (Sanctions — Central African Republic) Regulation 2014 ("the Regulation"), which commenced on 28 February 2014. The Regulation was made pursuant to subsection 6 (1) of the Charter of the United Nations Act 1945 ("the Act") and, as such:

(a) In accordance with section 9 of the Act, the Regulations have effect despite: an act enacted before the commencement of the Regulations; or a law of a State or Territory; or an instrument made under such a law; or any provision of the Corporations Act 2001 or the Australian Securities and Investments Commission Act 2001, or of regulations made under those Acts; or an instrument made under such a provision;

(b) In accordance with subsection 10 (1) of the Act, no Act enacted at or after the commencement of section 10 of the Act may be interpreted as amending or repealing, or otherwise altering the effect or operation of, a provision of the Regulations; or as authorizing the making of an instrument amending or repealing, or otherwise altering the effect or operation of, a provision of the Regulations.

3. Paragraph 54 of resolution 2127 (2013) requires all States:

(a) To prevent the direct or indirect supply, sale or transfer to the Central African Republic, from or through their territories or by their nationals, or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and related spare parts;

(b) To prevent the provision of technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel.

4. The Regulation implements the arms embargo established pursuant to paragraph 54 of resolution 2127 (2013) by:

(a) Prohibiting the direct or indirect supply, sale or transfer of "export sanctioned goods" to the Central African Republic, including through the use of Australian flag vessels or aircraft (regulation 8);

(b) Prohibiting the provision to the Central African Republic of a "sanctioned service", including through the use of Australian flag vessels or aircraft (regulation 10).

5. The Regulation defines "export sanctioned goods" as arms or related materiel (regulation 5), which is further defined to include all items prohibited under paragraph 54 of resolution 2127 (2013), namely: weapons, ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned.

6. The Regulation defines a "sanctioned service" as the provision to the Central African Republic of technical assistance, training, financial or other assistance, related to military activities; the provision, maintenance or use of any arms or related materiel; or the provision of armed mercenary personnel whether or not originating in Australia (regulation 6).

7. The Regulation thereby prohibits the matters covered by paragraph 54 of resolution 2127 (2013).

8. The Regulation provides for the Minister for Foreign Affairs to issue a permit for the provision of an otherwise sanctioned supply (regulation 9) or sanctioned service (regulation 11) to give effect to the exceptions to the arms embargo set out in paragraph 54 of resolution 2127 (2013).

9. Regulation 9 limits the Minister's authority to issue permits for the provision of a sanctioned supply to the circumstances mentioned in subparagraphs (a) to (f) of paragraph 54 of resolution 2127 (2013), namely:

(a) A supply intended solely for the support of or use by the Mission for the Consolidation of Peace in the Central African Republic (MICOPAX), the African-led International Support Mission in the Central African Republic (MISCA), the United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA) or its guard unit, the African Union-Regional Task Force (AU-RTF), or the French forces deployed in the Central African Republic;

(b) A supply of non-lethal military equipment intended solely for humanitarian or protective use and approved in advance by the Committee;

(c) A supply of protective clothing temporarily exported to the Central African Republic by United Nations personnel, representatives of the media and humanitarian or development workers or associated personnel, for their personal use only;

(d) A supply of small arms or other related equipment intended solely for use in international patrols providing security in the Sangha River Tri-national Protected Area to defend against poaching, smuggling of ivory or arms, or other activities contrary to the national laws of the Central African Republic or the Central African Republic's international legal obligations; or

(e) A supply of arms or other related lethal equipment to the Central African Republic security forces, intended solely for support of or use in the Central African

Republic process of security sector reform and approved in advance by the Committee.

10. Regulation 11 limits the Minister's authority to issue a permit for the provision of a sanctioned service to the circumstances mentioned in subparagraphs (b) and (f) of paragraph 54 of resolution 2127 (2013), namely:

(a) Technical assistance or training related to a supply of non-lethal military equipment intended solely for humanitarian or protective use and approved in advance by the Committee;

(b) Other provision of assistance or personnel approved in advance by the Committee.

Enforcement of the Regulations

11. We are in the process of recommending to the Minister for Foreign Affairs that she declare regulations 8 and 10 of the Regulation to be "United Nations sanction enforcement laws" under the Charter of the United Nations (United Nations Sanction Enforcement Law) Declaration 2009, in accordance with subsection 2B (1) of the Act. Contravention of a United Nations sanction enforcement law, or of a condition of a permit granted under United Nations sanction enforcement law (where applicable), is an offence under section 27 of the Act.

12. Each United Nations sanction enforcement law is given the jurisdictional scope to correspond with the obligation it enforces. All apply to conduct when committed, or when a result of the conduct occurs, wholly or partly in Australia or on board an Australian aircraft or ship.

13. Regulations 8 and 10 additionally apply (by reference in those regulations to the application of section 15.1 of the Criminal Code 1995) to conduct when committed wholly outside Australia by an Australian citizen or an Australian body corporate.

14. Regulations 8 and 10 also apply to conduct when committed by a person, whether or not in Australia and whether or not an Australian citizen, using the services of an Australian ship or aircraft.

15. Regulations 8 and 10 further provide that an Australian body corporate is liable for conduct contravening the regulation committed by another body corporate or entity, wherever incorporated or situated, if the Australian body corporate has effective control over the actions of that other body corporate or entity.

16. The current maximum penalty upon conviction for such an offence for individuals is 10 years' imprisonment or a fine the greater of \$425,000 or three times the value of the transaction. For a body corporate, the offence is one of strict liability unless it can prove that it took reasonable precautions and exercised due diligence to avoid contravening the regulation. The maximum penalty upon conviction for bodies corporate is a fine the greater of \$1.7 million or three times the value of the transaction.

Additional means to implement the arms embargo measures set out in resolution 2127 (2013)

17. Australia also implements arms embargo measures required under Security Council resolutions through the Customs Act 1901, which is administered by the Australian Customs and Border Protection Service. The Government of Australia is in the final stages of amending the Customs (Prohibited Exports) Regulations 1958, which are made under the Customs Act 1901, to prohibit the export of arms and related materiel to the Central African Republic without authorization under the Charter of the United Nations (Sanctions — Central African Republic) Regulation, as set out above.

Update on Australia's efforts to implement resolution 2134 (2014)

18. In resolution 2134 (2014), the Security Council extended the sanctions measures imposed in relation to the Central African Republic to allow for the imposition of travel bans and asset freezes on individuals who engage in or provide support for acts that undermine the peace, stability or security of the Central African Republic; act in violation of the arms embargo; commit human rights abuses or atrocities; recruit or use child soldiers; provide support for armed groups or criminal networks through the illegal exploitation of natural resources; obstruct the delivery of humanitarian assistance; or are involved in attacks against BINUCA, MISCA or other (French and soon European Union) forces that support the peacekeeping effort.

19. The Government of Australia is currently preparing amendments to the Charter of the United Nations (Sanctions — Central African Republic) Regulation 2014 to give effect to the above-mentioned measures.